A

PP

v.

SEGARAN S MATHAVAN

B

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM JC
[CRIMINAL REVISION NO: 43-34-2009]
9 SEPTEMBER 2009

C ***CIVIL PROCEDURE:*** *Transfer of case from one Sessions Court to another - Application for revision of decision dismissing transfer - Whether Kuala Lumpur Sessions Court had jurisdiction to hear Petaling Jaya Sessions Court case if transferred - Whether necessary for both cases to be heard together - Whether accused would be prejudiced by transfer -*
D *Revision of decision justified as decision incorrect and improper under s. 323(1) Criminal Procedure Code - Subordinate Courts Act 1948, ss. 59(2), 104 - Criminal Procedure Code, s. 417(1)(d), (e) & (bb)*

CIVIL PROCEDURE: *Jurisdiction - Sessions Court - Jurisdiction to*
E *try action - Subordinate Courts Act 1948, ss. 59(2), 104*

The Deputy Public Prosecutor ('DPP') made an application to this court for revision ('the application') of the decision by the judge of the Petaling Jaya Sessions Court ('the PJ Sessions Court') dismissing the prosecution's application to transfer the PJ Sessions
F Court Arrest Case to the Kuala Lumpur Sessions Court ('the KL Sessions Court') to be jointly tried with the KL Sessions Court Arrest Case. In the PJ Sessions Court Arrest Case No. 62-208-08, the accused was charged for three charges under s. 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act
G 2001 while in the KL Sessions Court Arrest Case No 62-400-2008, the accused was charged for nine charges under s. 420 of the Penal Code. The issue that arose was whether the PJ Sessions Court's order in dismissing the prosecution's application for transfer of the case was correct, legal or proper under
H s. 323(1) of the Criminal Procedure Code to require the High Court to make an order for revision under s. 327 of the Criminal Procedure Code.

I

Held (setting aside Sessions Court Judge's decision):

(1) Under s. 59(2) of the Subordinate Courts Act 1948, if no local limits of jurisdiction have been assigned to a Sessions Court, then the Sessions Court has jurisdiction to hear and determine any cause or matter arising in any part of the local jurisdiction of the respective High Court, which means that the Sessions Court has the same local jurisdiction of a High Court. Following the same principle as enunciated in the decisions in *Taman Rimba Mentakab Sdn Bhd v. Sin Yew Poh Tractors Workers* and *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* regarding the local jurisdiction of a High Court, the Sessions Court can sit anywhere, at any branch in Peninsular Malaya or West Malaysia. In the context of the present case, pursuant to s. 104 of the SCA, and reading it together also with its proviso, the PJ Sessions Court can determine whether to transfer the PJ Sessions Court case to the KL Sessions Court since the KL Sessions Court does have jurisdiction to hear such case transferred, and the transfer would not be deemed to be conferring jurisdiction on the KL Sessions Court in contravention of the same proviso. The KL Sessions Court had the jurisdiction to hear any PJ Sessions Court case if it was transferred there. (paras 18, 19 & 21)

(2) It was necessary for both Arrest Cases to be heard together since the series of acts committed in the offences were connected to each other and they involved the same subject matter, witness and documents. Offences committed in Petaling Jaya and Kuala Lumpur are often so intertwined that to restrict the trial for such offences to the administrative local limits of jurisdiction of each Sessions Court would hamper the smooth prosecution and proceedings of multiple offences involved in the same transaction that can take place in various locations in the Klang Valley. It is only practical and makes good sense to allow the transfer of such related offences from one Sessions Court to another even if it means a cross-border transfer, from one state to another. This would tend to the general convenience of the parties and witnesses. It would also save a lot of time and costs, not only for the parties but also for the court and the government. Such transfer of the case would not prejudice the accused in any way. (para 30)

(3) Apart from the justification for revision of the decision of the Sessions Court judge on grounds that such decision was incorrect or improper under s. 323(1) of the Criminal Procedure Code, in view of the powers given to the High Court in s. 417(1)(d), (e) and (bb) of the CPC, it would certainly be to the general convenience of the parties and witnesses, and expedient for the ends of justice to transfer the PJ Sessions Court Case. Accordingly, PJ Sessions Court Arrest Case 62-208-08 was ordered to be transferred to the relevant KL Sessions Court for Arrest Case 62-400-08. (paras 33 & 34)

Case(s) referred to:
Lim Kong v. PP [1962] 1 LNS 89 HC ***(refd)***
Manshor Omar v. PP & Another Case [2005] 1 CLJ 128 HC ***(refd)***
Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works [2002] 2 CLJ 112 HC ***(refd)***

Legislation referred to:
Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s. 4(1)(a)
Courts of Judicature Act 1964, ss. 31, 35, 36
Criminal Procedure Code, ss. 165, 323(1), 324, 325, 326, 327, 417(1)(d), (e), (bb)
Penal Code, s. 420
Subordinate Courts Act 1948, ss. 59(1), (2), 99A, 104

For the prosecution - Dzulkifli Ahmad DPP
For the accused - M/s DP Vijandran Assoc

Reported by Suhainah Wahiduddin

JUDGMENT

Yeoh Wee Siam JC:

[1] On 23 July 2009 the learned deputy public prosecutor ("the DPP") made an application to this Honourable Court for revision ("the application") of the decision by the learned judge of the Petaling Jaya Sessions Court ("the PJ Sessions Court") on 12 June 2009 which dismissed the prosecution's application to transfer the PJ Sessions Court Arrest Case No. 62-208-08 to the Kuala Lumpur Sessions Court ("the KL Sessions Court") to be jointly tried with the KL Sessions Court Arrest Case No. 62-400-08.

[2] In Arrest Case No. 62-208-08, the accused was charged on 18 September 2008 for three charges under s. 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001. A

[3] In Arrest Case No. 62-400-2008, the accused was charged on 29 June 2008 for nine charges under s. 420 of the Penal Code. B

[4] The High Court's powers of revision are provided by s. 31, 35 and 36 of the Courts of Judicature Act 1964 and Chapter XXXI, s. 323 to 327 of the Criminal Procedure Code ("the CPC"). C

[5] The question is whether the PJ Sessions Court's order in dismissing the prosecution's application for transfer of the case is correct, legal or proper under s. 323(1) of the CPC to require the High Court to make an order for revision under s. 327 of the CPC. D

[6] I immediately called for the records of the PJ Sessions Court ("the Sessions Court") for the purpose of examining such records before a decision can be made regarding the DPP's application. E

[7] The Sessions Court judge, on her own initiative, had written her grounds for dismissing the DPP's application. Briefly, the following are her grounds:

[8] The Sessions Court's power to transfer a case is subject to s. 104, together with s. 99A and para. 3(2) of the third schedule of the Subordinate Courts Act 1948 ("the SCA"). F

[9] Section 104 of the SCA provides as follows: G

> **104. Power of Sessions Court Judge or Magistrate to order transfer of criminal cause or matter**
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> A Sessions Court Judge or a Magistrate shall have jurisdiction in any criminal cause or matter, whether or not he has jurisdiction finally to hear and determine the same, to order, in any case where the interests of justice so require, that the cause or matter be transferred to any other Sessions Court or Magistrates' Court, as the case may be, which in his opinion has jurisdiction to hear and determine the same, and the same may be continued in that other Court accordingly: H
>
> Provided that nothing in this section shall be deemed to confer jurisdiction on any court to which a proceeding is so I

A transferred, if that court would not otherwise have jurisdiction in respect thereof.

[10] In view of the proviso to s. 104 of the SCA, the Sessions Court judge was of the opinion that she could only transfer Arrest B Case No. 62-208-08 from the PJ Sessions Court to the KL Sessions Court if the KL Sessions Court has jurisdiction over a case that is within the local jurisdiction of the PJ Sessions Court. She believes that she cannot transfer the PJ Sessions Court case to the KL Sessions Court because the latter does not have local C jurisdiction over PJ Sessions Court cases and she cannot confer jurisdiction on the KL Sessions Court by a mere transfer of the PJ Sessions Court case.

[11] The Sessions Court judge's decision is based on her understanding that the PJ Sessions Court has the local jurisdiction D assigned to it by the then Chief Justice of Malaya in the High Court Practice Direction No. 4 of 1993 read together with the High Court Practice Direction No. 2 of 1993.

[12] I perused the two practice directions and found as follows:

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[13] Practice Direction No. 4 of 1993, which came into effect on 1 June 1993, provides for Petaling Jaya and Kajang to be under the territory of the Shah Alam Sessions Court. It provides that Practice Direction No. 4 of 1993 must be read together with F Practice Direction No. 2 of 1993. Practice Direction No. 2 of 1993, which came into effect on 1 April 1993, provides that all Sessions Court criminal cases shall be registered and tried only in the Sessions Courts in Alor Setar, Batu Pahat, Butterworth, Georgetown, Ipoh, Johor Bahru, Kangar, Klang, Kota Bharu, G Kuala Kangsar, Kuala Lumpur, Terengganu, Kuantan, Melaka, Muar, Seremban, Shah Alam, Sungei Petani, Taiping, Telok Intan and Temerloh. *Vide* Practice Direction No. 4 of 1993, Ampang was added to this list after the words "Alor Star".

[14] The Sessions Court judge is of the view that the PJ Sessions H Court and the KL Sessions Court have been assigned different local jurisdictions by the above two practice directions.

[15] The Sessions Court judge also relied on s. 59(2) of the SCA. I have looked at s. 59(2) but I think it should be read I within the context of s. 59(1) of the SCA as well. Section 59(1) and (2) of the SCA provide as follows:

59. Constitution and territorial jurisdiction of Sessions Courts.

(1) The Yang di-Pertuan Agong may, by order, constitute so many Sessions Courts as he may think fit and shall have power, if he thinks fit, to assign local limits of jurisdiction thereto.

(2) Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

[16] In support of her reliance on s. 59(2) of the SCA, the Sessions Court judge cited the Ipoh High Court case of *Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works* [2002] 2 CLJ 112 where James Foong J (as he then was) in referring to s. 59(2) of the SCA stated:

> "Local limits" ... is set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court territorial jurisdictional areas of: Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis.
>
> These areas designated to the Ipoh Sessions Court are certainly not the place where the cause or matter in this action arose. It was either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya sitting in various capital cities and towns in Peninsular Malaysia, the Sessions Court throughout the country do not enjoy concurrent territorial jurisdiction of each other. Though they are set up by His Majesty, the Yang Di-Pertuan Agong under s. 59(1) of the Subordinate Courts Act, territorial jurisdictional boundaries are allocated to them. This is declared in s. 59(2) of the Subordinate Courts Act which says that the Sessions Court shall "to hear and determine any civil or criminal cause or matter **arising within the local limits or jurisdiction assigned to it** (emphasis added). The High Court does not have such jurisdiction except that it cannot go beyond the shores of the Malay Peninsular, *vice versa* with the High Court of Sabah & Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court judge has concurrent and co-ordinate jurisdiction to try cases as his counter-part in another city or town where there is a High Court. The rational for this is, as explained

A by Justice Lim Beng Choon in *Sova Sdn. Bhd. v. Kasih Sayang Realty Sdn. Bhd.* [1988] 2 MLJ 268 at p. 270, the two respective High Courts have many branches. Thus a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West
B Malaysia. This set up is therefore different from the subordinate courts. The subordinate courts have the restriction of local limits assigned to them. When a cause or matter arose outside its local limits then it has no jurisdiction to hear the substantive matter.

[17] With utmost respect to James Foong J (as he then was) and
C the Sessions Court J, I am of the humble view that s. 59(2) must be read first of all with s. 59(1) of the SCA. Under s. 59(1) of the SCA, it is only the Yang di-Pertuan Agong who may by order constitute the Sessions Courts as he thinks fit, and he shall also have the power to assign the local limits of jurisdiction of the
D Sessions Courts. From a search done by my Senior Assistant Registrar, it appears that so far, the Yang di-Pertuan Agong has not made any order under s. 59(1) of the SCA, that has been gazetted, to assign the local limits of jurisdiction of each Sessions Court. That being the case, administratively, the Sessions Courts
E have been guided by the High Court Practice Directions of 2 of 1993 and 4 of 1993 regarding their local limits of jurisdiction. In my opinion, the Practice Directions serve very well for the day-to-day registration and hearing of cases in the various Sessions Courts listed in the two practice directions. However, when the
F vital issue arises, such as in this application before me, as to whether the PJ Sessions Court, under the Shah Alam Sessions Court, and the KL Sessions already have local limits of jurisdiction assigned to them by order made by the Yang di-Pertuan Agong under s. 59(1) of the SCA, then the answer is in the negative.

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[18] Under s. 59(2) of the SCA, if no local limits of jurisdiction have been assigned to a Sessions Court, then the Sessions Court has jurisdiction to hear and determine any cause or matter arising in any part of the local jurisdiction of the respective High Court,
H which means that the Sessions Court has the same local jurisdiction of a High Court.

[19] Since that is the true legal position, then following the same principle as enunciated in the relevant parts of the decisions in *Taman Rimba Mentakab Sdn. Bhd. v. Sin Yew Poh Tractors Works*
I *(supra)* and *Sova Sdn. Bhd. v. Kasih Sayang Realty Sdn. Bhd. (supra)* regarding the local jurisdiction of a High Court, the Sessions Court can sit anywhere, at any branch in Peninsular

Malaya or West Malaysia. In the context of the present case, this means that pursuant to s. 104 of the SCA, and reading it together also with its proviso, the PJ Sessions Court can determine whether to transfer the PJ Sessions Court case to the KL Sessions Court since the KL Sessions Court does have jurisdiction to hear such case transferred, and the transfer would not be deemed to be conferring jurisdiction on the KL Sessions Court in contravention of the same proviso.

[20] The DPP cited to me the case of *Lim Kong v. Public Prosecutor* [1962] 1 LNS 89 where Justice Adams decided as follows:

> ... the jurisdiction of a Sessions Court is "Federation wide" (Courts Ordinance, 1948, section 592] and section 104 gives a President or Magistrate power to transfer any case or matter to any other Sessions Court in the interest of justice ... it clearly was in the interest of justice that this case be transferred from Mersing to Johor Bahru for the convenience of the learned President, Counsel and the Court generally and in order that the trial could continue in a place where the necessary legal authorities were readily available.

[21] Based on the above, I am of the opinion that the KL Sessions Court has the jurisdiction to hear any PJ Sessions Court case if it is transferred there.

[22] Under s. 99A of the SCA and para. 3(2) of the third schedule to the same Act, the Sessions Court has the additional "power, on application or of its own motion, to transfer any proceedings to another court of co-ordinate jurisdiction".

[23] Since I have deduced in the foregoing that the PJ Sessions Court can consider a possible transfer of the PJ Sessions Court case to the KL Sessions Court, the next issue is whether the condition for transfer as laid down in s. 104 of the SCA has been met.

[24] Under s. 104 of the SCA, the Sessions Court shall only transfer any criminal cause or matter to any other Sessions Court which has jurisdiction to hear and determine the same "where the interests of justice so require".

[25] The DPP's reasons on why the transfer of the PJ Sessions Court Arrest Case No. 62-208-08 to the KL Sessions Court is "in the interest of justice" are as follows (see paras. (i) to (v) of his letter of application for revision):

(i) The charges for Arrest Case No. 62-208-08 at the PJ Sessions Court originate from Arrest Case No. 62-400-08 at the KL Sessions Court, where money recovered from Arrest Case No. 62-400-08 has become the "subject matter" in Arrest Case No. 62-208-08.

(ii) In view of the above, there is a connection between the two arrest cases. A transfer of the PJ Sessions Court Case is necessary for the purpose of a joint trial for all the charges.

(iii) Looking at the charges in both Arrest Cases 62-400-08 and 62-208-08, it is clear that even though the offences were committed in different locations ie, Jabatan Logistik, Polis Di Raja Malaysia, Bukit Aman, Kuala Lumpur and CIMB Bank Berhad, Wisma Consplant, Subang Jaya, Petaling Jaya, both locations are in the Klang Valley area. Therefore, the accused's interest in the case is not prejudiced if the case is heard in the KL Sessions Court.

(iv) The transfer of Arrest Case No. 62-208-08 to the KL Sessions Court is necessary because it involves the same witnesses and reference to the same documents. This is with the purpose of saving time and costs for all the parties. It will make it convenient for all parties but it will not prejudice the Accused.

(v) The application for transfer in this case is similar to the application made in *Manshor bin Omar v. Public Prosecutor & Another Case* [2005] 1 CLJ 128 where Abdul Hamid Embong J (as he then was) in the Kuala Lumpur High Court decided as follows:

> The term 'where the interest of justice' merely means that when a judge makes a ruling or order he has, utmost in his mind, the fundamental of the requirements of fairness and justice. The order of transfer of these cases will tend to the general convenience of the parties and witnesses (see para 8). Although the charges referred to offences which took place in different places, they were all in the vicinity of the Klang Valley - the applicants' interest would not be prejudiced by having their cases tried in the same court in Ampang. More

> pertinently was the consideration that the charges arose from dealings in the same project and would involve the same witnesses and documents. It would certainly be convenient to all the applicants alike, to have them tried at the same forum (see para 9).

[26] I note that the nine charges in the KL Sessions Court Arrest Case No. 62-400-08 are for offences under s. 420 of the Penal Code, whereas the three charges for the PJ Sessions Court Arrest Case No. 62-208-08 are for offences under s. 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and I posed the question on what is the nexus between the two types of offences in the two different Sessions Courts.

[27] In his written submissions, in support of his application for revision to the High Court, the DPP in paras. 5 and 6 explained as follows:

[28] The charges in the PJ Sessions Court originate from offences committed under s. 420 of the Penal Code where it involved transactions for the supply of motor vehicle spare parts and involved the same witnesses and documents. Following that, the money that was obtained through cheating was misused in the offences of money laundering which occurred from April to July 2007. There is therefore a connection in the offences committed by the accused in the charges under s. 420 of the Penal Code and s. 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

[29] From the above reasons and submissions given by the DPP, I am satisfied that it is in the interest of justice that the PJ Sessions Court Arrest Case No. 62-208-08 be transferred to the KL Sessions Court for the purpose of a joint trial with KL Sessions Court Arrest Case No. 62-400-08.

[30] The information as disclosed by the DPP so far show that it is necessary for both arrest cases to be heard together since the series of acts committed in the offences are connected to each other and they involve the same subject matter, witnesses and documents. It is increasingly becoming a reality that offences committed in Petaling Jaya and Kuala Lumpur are often so intertwined that to restrict the trial for such offences to the administrative local limits of jurisdiction of each Sessions Court would hamper the smooth prosecution and proceedings of multiple offences involved in the same transaction that can take place in

various locations in the Klang Valley. It is only practical and makes good sense to allow the transfer of such related offences from one Sessions Court to another even if it means a cross-border transfer, from one state to another. This would tend to the general convenience of the parties and witnesses. It would also save a lot of time and costs, not only for the parties but also for the court and the Government. Such transfer of the case would not prejudice the accused in any way.

[31] I also note that s. 165 of the CPC does provide for a joint trial for more than one offence in the same transaction or for offences falling within two or more separate definitions of any law. Thus, a transfer of the PJ Sessions Court case is the first step to take before a joint trial can be applied for in the KL Sessions Court.

[32] In addition to the above sections of law cited on the Sessions Court's power to transfer a case, I also note that s. 417 of the CPC gives the High Court the power to transfer a case. Section 417(1)(d) and (e) and (bb), in particular, apply to this case. It provides as follows:

417. High Court's power to transfer cases.

(1) Whenever it is made to appear to the High Court:

(a) ...

(b) ...

(c) ...

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such order is expedient for the ends of justice, or is required by any provision of this Code;

it may order ...

(aa) ....

(bb) that any particular case or class or cases be transferred from a criminal Court subordinate to it to any other such criminal Court of equal or superior jurisdiction.

[33] Finally, apart from the justification for revision of the decision of the Sessions Court judge on grounds that such decision is incorrect or improper under s. 323(1) of the CPC, in view of the powers given to the High Court in s. 417(1)(d), (e) and (bb) of the CPC, I am also satisfied that it would certainly be to the general convenience of the parties and witnesses, and expedient for the ends of justice to transfer the PJ Sessions Court case.

[34] I therefore exercised my revisionary powers under the Courts of Judicature Act 1964 and the CPC on 26 August 2009 and set aside the Sessions Court judge's decision not to allow a transfer of the case. Accordingly, I ordered that the PJ Sessions Court Arrest Case No. 62-208-08 be transferred to the relevant KL Sessions Court for Arrest Case No. 62-400-08.